



POLICE DEPARTMENT CITY OF NEW YORK

January 19, 2017

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Kevin Smalls
Tax Registry No. 919725
40 Precinct
Disciplinary Case No. 2015-13816

Charges and Specifications:

1. Said Sergeant Kevin Smalls, while on-duty and assigned to the 40th Precinct as the Crime Analysis Supervisor, on or about June 20, 2014, failed to conduct a proper investigation into a complaint report, resulting in said complaint report being misclassified.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
– PROHIBITED CONDUCT (*As amended*)

Appearances:

For the Department: Jennifer Kim, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For Respondent: Peter E. Brill, Esq.
Brill Legal Group, P.C.
306 Fifth Avenue, Penthouse
New York, NY 10001

Hearing Date:

October 20, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT David S Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on October 20, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant James Blondo as a witness and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Most of the facts in this case were not in dispute. Respondent was the crime analysis sergeant in the 40 Precinct. In August 2014, the Quality Assurance Division received an anonymous letter alleging that the commanding officer of the 40 Precinct was downgrading crimes intentionally. This commanding officer had arrived at the command in April 2014.

SERGEANT JAMES BLONDO of QAD was one of the investigators in this matter. He noted that the 40 Precinct, on paper at least, had been leading the City by August 2014 in crime reduction that year. At the time of the commanding officer's arrival, the crime decrease was approximately 8%. By August, it was approximately 17.8%. QAD looked at over 1,550 complaint reports from May 1 to August 31, 2014, in five categories susceptible to having been downgraded: petit larceny, lost property, criminal mischief, criminal trespass, and misdemeanor assault. This kind of downgrading avoids the classification of an incident as an index crime, which includes grand larceny, grand larceny auto, robbery, burglary, and felony assault (murder and rape are also index crimes). Of these complaint reports, 41 were determined to have been misclassified (Tr. 15-18, 26, 44-45).

One of these reports concerned a larceny from an automobile that took place on June 15, 2014. The owner came to his parked vehicle in the confines of the 40 Precinct and found that it had been broken into with several items of property missing. Three things were listed as “gift” on the scratch copy of the complaint report (Dept. Ex. 1) and the complainant’s report of lost or stolen property/identity theft (Dept. Ex. 2). These were a set of nine Titleist golf clubs, an Odyssey putter, and a pair of Nike golf shoes. On the finalized Omniform copy of the complaint report (Dept. Ex. 3), these were listed with values of \$220, \$50, and \$50, respectively. The total amount of stolen property listed on the finalized copy was \$994. This was a red flag for Blondo because the threshold for grand larceny is \$1,000, see Penal Law § 155.30 (1) (Tr. 18-21, 23-24, 38).

Blondo testified that he spoke to the motorist by phone. The motorist was able to articulate monetary values for all of the items stolen. He said that he had purchased two of the items listed as “gift” on the scratch copy with cash, and gift cards he had received for his birthday. The motorist gave Blondo values of \$999 for the Titleist set and between \$179 and \$199 for the putter. The golf shoes were a gift from his girlfriend, but he knew that she paid \$100 for them. The officers who handled his complaint, however, asked him for receipts. Blondo testified that as per the Department’s Crime Complaint Reporting System Reference Guide, receipts are not necessary (Tr. 21-24, 35-37; Dept. Ex. 4, interview transcript).

Blondo indicated that in his official Department interview, Respondent said a member assigned to the crime analysis office brought the scratch copy of the complaint report to Respondent’s attention. She knew that items could not be listed as “gift” and wanted to know what to do. Respondent said that he contacted Police Officer Phedencia Chaney, the officer that responded to the radio run for the larceny and took the complaint report. Respondent told Chaney that values had to be stated for each item. Chaney claimed in her official Department

interview that Respondent specified the values that she should write in the report. The patrol supervisor during the tour in question, Sergeant Marlene Quinones (see *Case No. 2015-13815* [May 23, 2016, forfeiture of 30 vacation days for three instances of downgrading]), admitted in her interview that she knew the matter was an index crime but did not want the commanding officer to discover this. Quinones said that she directed Chaney to make it a petit larceny. Blondo stated that the Omniform system showed Chaney accessed the complaint report, and that subsequently Respondent accessed it as well, before it was finalized (Tr. 24-25, 27-35, 37-38, 42, 45-46).

Blondo concluded that the report was misclassified. In Blondo's view, once Respondent was made aware of the "gift" issue, he should have had the crime analysis office contact the complainant to get the actual values. Respondent should have had the officer that approached him do this, or do it himself. Respondent also could have done an Internet search using a reputable company's prices as a basis for determining fair market value (Tr. 18, 24-25, 38-39, 42).

RESPONDENT testified that he had been a member of the Department for 19 and a half years. He had done crime analysis for about 13 years, first as a police officer in the 28 Precinct and then as a sergeant in the 40 Precinct. He denied that the new commanding officer of the 40 Precinct had directed him to downgrade index crime statistics, or that he had ever "taken it upon [him]self" to do so. He stated that he believed in the integrity of the process and thought of himself as quite good at it. Nevertheless, after the investigation in question, Respondent was returned to patrol (Tr. 50-51, 53-54, 67).

Respondent noted that one crime analysis function was to review all complaint reports, both scratch and Omniform copies. Another function was to provide index crime statistics to the commanding officer. The complaint report in question was flagged by one of the crime analysis

officers because of the "gift" notation and had to be corrected. Respondent approached Chaney and told her that the items needed to have prices listed. He did not tell her what prices to put down. According to Respondent, Chaney chafed at this and said, "I don't know. How am I supposed to do it? It was a gift. He doesn't know the prices." Chaney did not say that Quinones told her to write down "gift," or that downgrading the offense was the objective. Respondent reiterated to Chaney that she could call the complainant back, or go online to find prices, but the complaint report had to state values. Respondent had Chaney do it, as opposed to one of the crime analysis officers, as a learning opportunity. He conceded that he believed Chaney knew that "gift" was not supposed to be listed, and that she just did not want to adjust the report (Tr. 57-61, 66-71, 73-74).

Respondent indicated that Chaney returned in a couple of days with values on the Omniform copy. This was when Respondent went into the Omniform system, as Blondo had testified. Respondent realized that the total came to \$994, and this caused "some form of scrutiny," although not what he would term a "red flag." If, however, "there is nothing unusual with it, if there is nothing out of the ordinary," there was no reason to change it. Respondent's goal was to remain neutral. If the values added to \$994 and it resulted in a petit larceny, or to \$1,004 and a grand larceny, as long as the prices were accurate, it would not be changed. For example, one time Respondent questioned an officer about a value of a stolen tool that was listed on the complaint report as \$2,000. The officer was insistent that the complainant had given this value, but an online search showed prices a tenth of that. The officer re-verified the price with the complainant, and Respondent did not change the report. Respondent later learned that the power tool version of the item in question could cost much more than \$200. In the case at bar, Respondent did not play golf and had no reference point for how much such things cost. The prices listed appeared reasonable to him (Tr. 61-65, 71-75, 78-79).

Opinion

Respondent is charged with failing to conduct a proper investigation into this complaint report, resulting in its misclassification as a petit larceny instead of what it should have been, a grand larceny. Respondent had an obligation to act reasonably and exercise good judgment while performing his duties. To impose a disciplinary sanction, however, there must be some showing of fault on the officer's part: that he acted intentionally, unreasonably or negligently. See Civil Service Law § 75; Matter of Griffin v. Thompson, 202 N.Y. 104, 110 (1911); Matter of Dickinson v. New York State Unified Ct. Sys., 99 A.D.3d 569, 569-70 (1st Dept. 2012). To satisfy this burden of proof, the Department had to prove that Respondent intentionally violated a procedural rule or was careless in his duties in some respect.

The Department's view of the case was that Respondent, as the crime analysis supervisor, ultimately was responsible for the accuracy of every complaint report generated by the 40 Precinct. Because Respondent knew about the "gift" issue, he should have done a "thorough investigation" into the matter. "[A] better course of action" would have been for Respondent to have the crime analysis office call the complainant directly and get the values that way (Tr. 6, 25).

The Court rejects the Department's argument. First, supervisors generally are entitled to rely on the reports of their subordinates. It is true that members of the Department must be accurate when preparing arrest paperwork. This, however, is primarily the responsibility of the officers who draw up the paperwork, not of the supervisor to watch the officer every step of the arrest-processing way. See Case No. 2010-2143, p. 15 (Apr. 7, 2014) (conditions supervisor not responsible for arresting officer lying on paperwork that he personally observed crime); Case No. 79633/04, pp. 9-10 (Sept. 13, 2004) (rejecting claim that sergeant in integrity test should have

watched more intently so that he could have seen his subordinate officer dump two small bags of marijuana down a grate, as opposed to doing other necessary supervisory work).

Second, supervisors are entitled to give instructions to their subordinates with the expectation that those instructions will be followed. It is not necessary to hold their hand or check their work. See Case No. 2009-0313, pp. 10-11 (Jan. 10, 2012) (sergeant not guilty of failing to instruct police officers that because his tour was over, they would have to go to the desk officer to have their arrest paperwork signed; based on their training and experience, the officers should have known this already); *Case Nos. 83041/07 & 85211/09*, p. 32 (June 30, 2010) (sergeant not guilty of failing to ensure subordinate properly vouchered prisoner property, where sergeant's tour was over and he gave officer specific instructions; sergeant was not responsible for the officer's failure to follow those instructions).

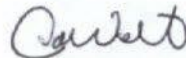
In the tribunal's view, Respondent acted reasonably. He took proper action when faced with a scratch complaint report that was inaccurately filled out. Namely, he told Chaney that she had to do her job and get actual values for the stolen items. The fact that they might have been given to the owner as gifts should not have prevented that. Chaney appeared to follow Respondent's instructions and came back with a complaint report containing values for each item.

In Respondent's view, as well as that of this tribunal, the values listed in the Omniform report were reasonable. The fact that the amounts totaled six dollars less than the grand larceny threshold was just the way the cookie crumbled. As Respondent testified, had the total been six dollars above the threshold, he still would have gone with the amounts Chaney gave. Respondent should not have been required or expected to divine from Chaney's nonchalance that she was attempting to downgrade the larceny. Respondent credibly testified that Chaney appeared to want to avoid doing work, as opposed to her trying to make the case into a petit

larceny. See Case No. 74576/99, pp. 12-14 (Nov. 14, 2000) (Department failed to prove that sergeant new to command should have discovered scheme to inflate truancy numbers; it was undisputed that increased enforcement was a proper goal, and false pedigrees were to be expected from truants).

In sum, Respondent's conduct here was reasonable and proper, and the Department failed to prove that he committed misconduct. Therefore, the Court finds him Not Guilty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

APR 17 2017



JAMES P. O'NEILL
POLICE COMMISSIONER